

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

F.L.B., a minor, by and through his Next Friend,
Casey Trupin, et al.; on behalf of themselves as
individuals and on behalf of others similarly
situated,

Plaintiffs-Petitioners,

v.

Loretta E. LYNCH, Attorney General, United
States, et al.,

Defendants-Respondents.

Case No. 2:14cv-01026-TSZ

EIGHTH DECLARATION OF
STEPHEN KANG IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

I, Stephen Kang, declare as follows:

1. I submit this declaration in support of Plaintiffs' motion for summary judgment. I have personal knowledge of the facts set forth herein, and, if called as a witness, I could and would testify competently as set forth below.

2. I am over the age of 18 and competent to testify. I am an attorney with the ACLU Immigrants' Rights Project, and a counsel of record for Plaintiffs. I am a member of the California state bar. I work under the supervision of Ahilan Arulanantham of the ACLU Immigrants' Rights Project and the ACLU of Southern California, who is lead counsel for Plaintiffs.

3. Attached hereto as Exhibit A are true and correct copies of excerpts from the

1 deposition of Jack H. Weil, taken on October 15, 2015.

2 4. Attached hereto as Exhibit B are true and correct copies of excerpts from the
3 deposition of David B. Thronson, taken on June 3, 2016.

4 5. Attached hereto as Exhibit C are true and correct copies of excerpts from the
5 deposition of Avram H. Mack, taken on June 2, 2016.

6 6. Attached hereto as Exhibit D are true and correct copies of excerpts from the
7 deposition of Tricia Swartz, taken on November 19, 2015.

8 7. Attached hereto as Exhibit E are true and correct copies of excerpts from the
9 deposition of Steven C. Lang, taken on October 15, 2015.

10 8. Attached hereto as Exhibit F are true and correct copies of excerpts from the
11 deposition of Laurence Steinberg, taken on May 27, 2016.

12 9. Attached hereto as Exhibit G are true and correct copies of excerpts from the
13 deposition of Stephen Marc Antkowiak, taken on May 26, 2016.

14 10. Attached hereto as Exhibit H are true and correct redacted copies of excerpts
15 from the deposition of Eloisa Sarahy Mejia Sevilla, taken on May 20, 2016.

16 11. Attached hereto as Exhibit I are true and correct copies of excerpts from the
17 deposition of Ted Kim, taken on May 26, 2016.

18 12. Attached hereto as Exhibit J are true and correct copies of excerpts from the
19 deposition of Tin Thanh Nguyen, taken on March 16, 2016.

20 13. Attached hereto as Exhibit K are true and correct copies of excerpts from the
21 deposition of Eve Stotland, taken on March 21, 2016.

22 14. Attached hereto as Exhibit L are true and correct copies of excerpts from the
23 deposition of Qing Pan, taken on July 1, 2016.

24 15. Attached hereto as Exhibit M are true and correct copies of excerpts from the
25 deposition of Gregory E. Fehlings, taken on August 4, 2016. Mr. Fehlings has yet to submit
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1 an errata sheet. Plaintiffs will submit the errata sheet to the Court when it becomes available if
2 it alters any language in the excerpted portions submitted here.

3 16. Attached hereto as Exhibit N are true and correct copies of excerpts from the
4 deposition of Jojo Annobil, taken on March 18, 2016.

5 17. Attached hereto as Exhibit O is a true and correct copy of the Report prepared
6 by David B. Thronson, dated December 14, 2015, which is also Exhibit DX-3 to the
7 deposition of David B. Thronson, taken on June 3, 2016.

8 18. Attached hereto as Exhibit P is a true and correct copy of a Report (“1st Mack
9 Report”) prepared by Dr. Avram Mack, dated February 16, 2016, which is also Exhibit 73 to
10 the deposition of Dr. Avram Mack, taken on June 2, 2016.

11 19. Attached hereto as Exhibit Q is a true and correct copy of an Expert
12 Supplemental Report (“2nd Mack Report”) prepared by Dr. Avram Mack, dated June 20,
13 2016.

14 20. Attached hereto as Exhibit R is a true and correct copy of disks produced by
15 Defendants titled “Know Your Rights” which are also Exhibit 38 to the deposition of Tricia
16 Swartz, taken on November 19, 2015.

17 21. Attached hereto as Exhibit S is a true and correct copy of EOIR000244-
18 EOIR000251 as produced by Defendants, which is also Exhibit 7 to the deposition of Steven
19 C. Lang, taken on October 15, 2015. This document is an e-mail dated September 10, 2014
20 attaching the “Friend of Court Guidance Memorandum.”

21 22. Attached hereto as Exhibit T is a true and correct copy of EOIR000229-
22 EOIR000232 as produced by Defendants, which is also Exhibit 14 to the deposition of Jack
23 H. Weil, taken on October 15, 2015. This document is an e-mail dated March 24, 2015
24 attaching the “Docketing Practices Memorandum.pdf”.

25 23. Attached hereto as Exhibit U is a true and correct copy of a U.S. Department of
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1 Justice Executive Office for Immigration Review, Office of the Chief Immigration Judge
 2 Memorandum, dated May 22, 2007, as produced by Defendants, which is also Exhibit 11 to
 3 the deposition of Jack H. Weil, taken on October 15, 2015. This document is titled "Operating
 4 Policies and Procedures Memorandum 07-01: Guidelines for Immigration Court Cases
 5 Involving Unaccompanied Alien Children."

6 24. Attached hereto as Exhibit V is a true and correct copy of the Asylum Officer
 7 Basic Training Course, Guidelines for Children's Asylum Claims, which is also admitted as
 8 Exhibit 60 to the deposition of Ted Kim, taken on May 26, 2016.

9 25. Attached hereto as Exhibit W is a true and correct copy of HHS004502-
 10 HHS004507, as produced by Defendants, which is also Exhibit 37 to the deposition of Tricia
 11 Swartz, taken on November 19, 2015. This document is titled "Office of Refugee
 12 Resettlement-Division of Children's Services-Legal Resource Guide-Know Your Rights
 13 Handout."

14 26. Attached hereto as Exhibit X is a true and correct copy of a document titled
 15 "Unaccompanied Children's Services | Office of Refugee Resettlement | Administration for
 16 Children and Families," published August 9, 2012, which is also Exhibit 41 from the
 17 deposition of Tricia Swartz, taken on November 19, 2015.

18 27. Attached hereto as Exhibit Y is a true and correct redacted copy of
 19 EOIR001588-EOIR001591, as produced by Defendants. This document is a transcript of the
 20 removal hearings of Plaintiffs A.F.M.J., L.J.M., and M.R.J.

21 28. Attached hereto as Exhibit Z is a true and correct redacted copy of
 22 EOIR001540-EOIR001541, as produced by Defendants, which is also Exhibit 96 to the
 23 deposition of Rodin Rooyani, taken August 9, 2016. This document is a transcript of the
 24 removal hearing of Plaintiff A.E.G.E.

25 29. Attached hereto as Exhibit AA is a true and correct copy of a document titled
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1 “USCIS Briefing to USCRI-NGOs Serving Unaccompanied Alien Children,” dated December
2 11, 2014, as produced by Defendants, which is also Exhibit 65 to the deposition of Ted Kim,
3 taken on May 26, 2016.

4 30. Attached hereto as Exhibit BB is a true and correct copy of ICE000382-
5 ICE000383, as produced by Defendants, which is also Exhibit 56 to the deposition of Ted
6 Kim, taken on May 26, 2016. This document is titled “Instruction Sheet for an
7 Unaccompanied Alien Child in Immigration Court to Submit a Form I-589 Asylum
8 Application to U.S. Citizenship and Immigration Services (USCIS).”

9 31. Attached hereto as Exhibit CC is a true and correct copy of a document titled
10 “Adjudicating Children’s Asylum Claims: Capacity Issues by the U.S. Citizenship and
11 Immigration Services,” which is also Exhibit 61 to the deposition of Ted Kim, taken on May
12 26, 2016.

13 32. Attached hereto as Exhibit DD is a true and correct copy of USCIS000161-
14 USCIS000167, a document titled “Briefing Paper on Asylum Applications filed by
15 Unaccompanied Alien Children,” as produced by Defendants. This document is filed under
16 seal.

17 33. Attached hereto as Exhibit EE is a true and correct redacted copy of F.L.B.’s
18 Verified Responses to defendant’s First Set of Interrogatories dated December 28, 2015.

19 34. Attached hereto as Exhibit FF is a true and correct redacted copy of J.E.V.G.’s
20 Verified Responses to defendant’s First Set of Interrogatories dated December 28, 2015.

21 35. Attached hereto as Exhibit GG is a true and correct redacted copy of
22 A.F.M.J.’s Verified Second Supplemental Responses to defendant’s First Set of
23 Interrogatories dated June 24, 2016.

24 36. Attached hereto as Exhibit HH is a true and correct redacted copy of L.J.M.’s
25 Verified First Supplemental Responses to defendant’s First Set of Interrogatories dated May
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1 17, 2016.

2 37. Attached hereto as Exhibit II is a true and correct copy of Plaintiffs' Verified
3 Responses to Defendants' Class Discovery Requests, dated August 8, 2016. Attachment B to
4 this Exhibit is filed under seal.

5 38. Attached hereto as Exhibit JJ is a true and correct copy of HHS002521, as
6 produced by Defendants, which is also Exhibit 19 to the deposition of Tricia Swartz, taken on
7 November 19, 2015. This document is a Solicitation/Contract/Order For Commercial Items
8 form with the VERA Institute. This document is filed under seal.

9 39. Attached hereto as Exhibit KK is a true and correct copy of the Expert Report
10 of Professor Susan B. Long, which is also Exhibit B to the deposition of Susan Long, taken on
11 June 30, 2016.

12 40. Attached hereto as Exhibit LL is a true and correct copy of Dr. Qing Pan's
13 Supplemental Expert Report in Rebuttal to the Supplemental Expert Report of Susan B. Long
14 ("2nd Pan Report") dated June 24, 2016, which is also Exhibit 84 to the deposition of Dr. Pan,
15 taken on July 1, 2016.

16 41. Attached hereto as Exhibit MM is a true and correct copy of the Expert Report
17 of Dr. Laurence Steinberg ("1st Steinberg Report") dated December 15, 2015, which is also
18 Exhibit 1 to the deposition of Dr. Laurence Steinberg, taken on May 27, 2016.

19 42. Attached hereto as Exhibit NN is a true and correct copy of the Supplemental
20 Expert Report of Dr. Laurence Steinberg ("2nd Steinberg Report") dated May 2, 2016, as
21 produced by Plaintiffs on May 9, 2016.

22 43. Attached hereto as Exhibit OO is a true and correct copy of EOIR001659-
23 EOIR001666, as produced by Defendants. This document is titled "Prepared Language for
24 Administrative Closure of Cases with (1) Approved Form I-360 Petition or (2) Pending Form
25 I-360 with no available EB-4 visa." Excerpts from this document are also Exhibit 89 of the
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1 deposition of Gregory E. Fehlings, taken on August 4, 2016. This document is filed under
2 seal.

3 44. Attached hereto as Exhibit PP is a true and correct redacted copy of
4 EOIR001181-EOIR001185, as produced by Defendants. These pages are a transcript of the
5 G.J.C.P. Removal Proceedings Transcript of Hearing, dated August 22, 2014.

6 45. Attached hereto as Exhibit QQ is a true and correct redacted copy of
7 EOIR001170-EOIR001174, as produced by Defendants, of the G.J.C.P. Removal Proceedings
8 Decision, dated August 22, 2014.

9 46. Attached hereto as Exhibit RR are true and correct copies of excerpts of the
10 transcript of the hearing on F.L.B.'s motion for preliminary injunction in this case, which took
11 place on July 8, 2016.

12 47. Plaintiffs' motion for summary judgment relies on excerpts from the
13 deposition of Daniel Sharp, taken on August 2, 2016. Plaintiffs are awaiting the transcript of
14 that deposition, and will submit it to the Court when it becomes available. Citations to this
15 paragraph are intended as placeholders for that transcript.

16
17 I declare under the penalty of perjury under the laws of the United States that the
18 foregoing is true and correct.

19
20 Executed this 11th day of August, 2016, in San Francisco, California.

21
22 s/ Stephen Kang
23 STEPHEN B. KANG, ESQ.

CERTIFICATE OF ECF FILING AND SERVICE

I certify that on August 11, 2016, I arranged for electronic filing of the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record:

s/ Glenda M. Aldana Madrid

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